

REQUEST FOR COUNCIL ACTION

SUBJECT: Consideration and approval of a purchase and sale agreement between the city and West Jordan 12, LLC (Mountain States Supply) for property acquisition of 8152 South Welby Park Drive for relocation of property within the City Center (Briarwood) redevelopment area.

SUMMARY: For the last six months, city staff and the selected developer, Arbor Gardner, have been collaborating with the Jordan School District to find a satisfactory site to relocate one of their administrative uses. It is more specifically the site where the district has their facilities for Auxiliary Services located at 7905 S Redwood Road. The West Jordan 12 property is part of the preferred relocation solution the district brought to the redevelopment team.

FISCAL IMPACT: Financing will be determined based on what is negotiated in an agreement with the developer. The fiscal impact could be as high as the purchase amount plus the cost of financing.

STAFF RECOMMENDATION:
Approve purchase and sell agreement between the city and Jordan 12 LLC for property acquisition of 8152 South Welby Park Drive for relocation of property within the City Center (Briarwood) redevelopment area

MOTION RECOMMENDED:
"I move to adopt resolution # 15-81 authorizing the Mayor to sign the purchase and sale agreement between the city and West Jordan 12 LLC for property acquisition of 8152 South Welby Park Drive for relocation of property within the City Center (Briarwood) redevelopment area."

Roll Call vote required

Prepared by:

Reviewed by:

Reviewed by:

Recommended by:



Tom Burdett
Development Director

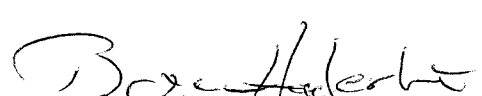


Jeff Robinson
City Attorney



David Clemence

Real Est. Services Mgr.



Bryce Haderlie

Interim City Manager

BACKGROUND DISCUSSION:

The Redevelopment Agency authorized staff to pursue discussions with Arbor Land Development and the Gardner Company to prepare a letter of intent to redevelop portions of RDA #6 (Briarwood) and RDA #2 (1300 to 1500 West 7800 South), including the potential relocation of the Jordan School District Auxiliary Services Building facilities to city-owned property. The Agency desires that the ASB site be made available for redevelopment that would increase the tax base of the City of West Jordan and provide for various benefits to the welfare of the residents of the City, which would require the ASB to be relocated.

Last year, the Agency Board Chair, Executive Director and staff contacted the Jordan School District Administration to explore collaboration with the District regarding relocation of the Auxiliary Services facilities.

The School District administration indicated it is willing to consider relocation of the ASB and desires to save on maintenance costs and provide for warehouse, training, energy and other efficiencies in connection with any relocation of the ASB. The School District desires to be made whole and to be fairly compensated for the existing ASB in connection with any relocation of the ASB.

For the last six months, city staff and the selected developer, Arbor Gardner, have been collaborating with the Jordan School District to find a satisfactory site to relocate one of their administrative uses, specifically the site where district has their facilities for Auxiliary Services located at 7905 So Redwood Road. The school district proposed a combination of two sites that could replace the existing facility. First is the purchase of the Mountain States Supply property located at 8152 South Welby Park Drive. The second site is the construction of a mirror image of the existing administration office building located at 7387 South Campus View Drive in Jordan Landing. This action is the acquisition of the Mountain States Supply (West Jordan 12 LLC) for relocation of a portion of their property within the City Center (Briarwood) redevelopment area.

Financing will be determined based on what is negotiated in an agreement with the developer. Four options have been drafted by the Finance Department. One of these options, or another combination, should be selected and pursued if this acquisition is to be executed at the end of the 120 day due diligence period. If these options seem unreasonable, then the acquisition should not be pursued at this time.

A Municipal Corporation

A RESOLUTION AUTHORIZING THE MAYOR TO SIGN A PURCHASE AND SALE AGREEMENT BETWEEN WEST JORDAN 12, LLC AND THE CITY OF WEST JORDAN FOR ACQUISITION OF REAL PROPERTY LOCATED AT 8152 SOUTH WELBY PARK DRIVE

Jeff Haaga
Judy Hansen
Chris McConnehey
Chad Nichols
Sophie Rice
Ben Southworth
Mayor Kim V. Rolfe

[illegible]

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT ("**Agreement**") is entered into as of the ____ day of _____, 2015 by and between WEST JORDAN 12, LLC, a Utah limited liability company, or its assigns ("**Seller**") and the CITY OF WEST JORDAN, or its assigns ("**Buyer**").

WHEREAS, Seller owns certain real property located at 8152 South Welby Park Drive in West Jordan, Utah, as more particularly described on Exhibit "A", attached hereto and by this reference incorporated herein; and

WHEREAS, Seller desires to sell the Property (as defined below) to Buyer and Buyer desires to purchase the Property from Seller pursuant to the terms and conditions set forth in this Agreement,

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Buyer and Seller agree as follows:

1. Agreement to Sell. Seller hereby agrees to sell to Buyer, and Buyer hereby agrees to purchase from Seller, on the terms, conditions, and provisions set forth herein, that certain tract of real property described on attached Exhibit "A", together with all improvements, structures, fixtures (except furniture and appliances), plants, trees and shrubbery constructed thereon (collectively, the "**Property**").

2. Purchase Price. The purchase price for the Property (the "**Purchase Price**") shall be Seven Million Four Hundred Fifty Thousand Dollars (\$7,450,000.00).

3. Earnest Money Deposit. Within ten (10) days following full execution of this Agreement, Buyer shall deposit the sum of Ten Thousand Dollars (\$10,000.00) as an earnest money deposit (the "**Earnest Money**") into escrow with Founders Title Company (Attention: Jim Morris) (the "**Title Company**"). The Earnest Money shall be deposited into an interest bearing account with all interest accruing to the benefit of Buyer. At Closing (as defined below), the Earnest Money shall be applied to the Purchase Price. If for any reason Closing does not occur, the Earnest Money shall be disbursed in accordance with the terms of this Agreement. Simultaneous with Buyer's deposit of the Earnest Money, Buyer shall deliver a fully executed copy of this Agreement to the Title Company.

4. Seller's Obligations.

(a) Title Commitment. Within ten (10) days after full execution of this Agreement, Seller, at its sole cost and expense, shall deliver to Buyer or Buyer's designee a commitment issued by the Title Company for an ALTA Standard Coverage Owner's Policy of Title Insurance (the "**Title Commitment**") in the full amount of the Purchase Price. The Title Commitment shall show all matters affecting title to the Property including all exceptions, easements, restrictions, rights-of-way, covenants, reservations and other

conditions or encumbrances affecting the Property and shall provide legible copies of all recorded documents constituting such exceptions. Prior to expiration of the Due Diligence Period (as defined below), Buyer shall provide written notice to Seller of any matter contained in the Title Commitment to which Buyer objects. Within ten (10) days after Seller's receipt of such notice, Seller, in its sole discretion, shall (a) use its good faith efforts to remove or cure any such matter, or (b) notify Buyer that it cannot or will not remove such matter. In the event Seller cannot or will not remove any such matter, Buyer may elect to either waive such matter or terminate this Agreement (in which case the Earnest Money and any interest accrued thereon will be returned to Buyer). Any matters contained in the Title Commitment to which Buyer does not timely object or which have been waived by Buyer shall be deemed "**Permitted Exceptions**".

(b) Survey, Studies and Reports. Within three (3) days after full execution of this Agreement, Seller shall provide Buyer with the documents listed below to the extent such documents exist and are in Seller's possession:

- (i) a copy of an ALTA survey of the Property (the "**Survey**");
- (ii) a copy of a Phase I and/or Phase II Environmental Site Assessment for the Property; and
- (iii) copies of any soils report or other studies relating to the Property.

5. Due Diligence Period.

(a) Buyer shall have sixty (60) days from the date of full execution of this Agreement in which to: (i) conduct, at its sole cost and expense, its inspection of the Property, (ii) review the documents and reports provided in accordance with Section 4 above, (iii) review any other documents or reports relating to the Property which Buyer may, at its sole cost and expense, elect to have prepared, and (iv) determine, in Buyer's sole discretion, if the Property is economically feasible for Buyer's intended use (the "**Due Diligence Period**"). Seller hereby grants Buyer, its employees and agents access to the Property for the purpose of conducting Buyer's inspection, provided however, Buyer shall restore the Property to its condition prior to such inspection activities, and provided further that Buyer shall indemnify and hold Seller harmless from any and all liability, claims or expenses arising out of Buyer's inspection activities conducted during the Due Diligence Period. The foregoing indemnification shall survive Closing or termination of this Agreement. Prior to entry upon the Property, Buyer shall deliver to Seller a certificate of general liability insurance evidencing a policy with a combined single limit amount of at least One Million Dollars (\$1,000,000.00) in which Seller is named as an additional insured. Subject to the provisions of subsections (b) and (c) below, upon expiration of the Due Diligence Period, the Earnest Money shall become non-refundable to Buyer but shall, at Closing, be applied to the Purchase Price. Provided, however, if Buyer does not provide written notice to Seller prior to expiration of the Due Diligence Period that Buyer has approved the Property and all items delivered pursuant to Section 4 above, Buyer shall be deemed not to have approved the

Property in which case the Earnest Money shall be refunded to Buyer, this Agreement shall terminate and, except for the indemnifications contained herein which survive termination, the parties shall have no further obligations hereunder.

(b) Buyer shall have a period of sixty (60) days following expiration of the Due Diligence Period (the “**First Additional Period**”) in which to enter into a written agreement to purchase the Jordan School District property located at 7800 South Redwood Road and obtain approval for a reset date of RDA #6. In the event Buyer has not entered into such a written agreement or obtained such approval prior to expiration of the First Additional Period, the Earnest Money shall be refunded to Buyer, this Agreement shall terminate and, except for the indemnifications contained herein which survive termination, the parties shall have no further obligations hereunder.

(c) Buyer shall have a period of thirty (30) days following expiration of the First Additional Period (the “**Second Additional Period**”) in which to obtain formal approval of the relocation agreement from the Jordan School District and the West Jordan City Council. In the event Buyer has not obtained such formal approvals prior to expiration of the Second Additional Period, the Earnest Money shall be refunded to Buyer, this Agreement shall terminate and, except for the indemnifications contained herein which survive termination, the parties shall have no further obligations hereunder.

6. Conditions Precedent. Buyer’s obligation to purchase the Property under this Agreement is subject to:

(a) Seller delivering to Buyer, or its designee, at Closing a special warranty deed (the “**Deed**”) conveying good and marketable title to the Property free and clear of all liens and encumbrances, except for the Permitted Exceptions, and matters shown on the plat filed in the official records of Salt Lake County, Utah;

(b) Seller delivering to Buyer at Closing a standard coverage Owner’s Policy of Title Insurance in the amount of the Purchase Price insuring fee simple title to the Property in Buyer as of the date of recording the Deed subject only to the Permitted Exceptions; and

(c) Buyer’s approval of the Property and receipt of the approvals as provided in Section 5 above prior to expiration of the Due Diligence Period, First Additional Period and Second Additional Period, as applicable;

(d) Buyer having obtained financing or a commitment to financing for its purchase of the Property, by the issuance of bonds or developer financing, on terms and conditions acceptable to Buyer in its sole but reasonable determination, by the end of the Second Additional Period.

7. Seller’s Representations and Warranties. Seller hereby represents and warrants as follows:

(a) Seller's Authority. Seller has full power and authority to execute, enter into and perform this Agreement and any person or entity executing this Agreement on behalf of Seller has the authority to execute the same. This Agreement and all documents to be executed pursuant hereto by Seller are and shall be binding upon and enforceable against Seller in accordance with their respective terms.

(b) Bankruptcy. Seller has not (i) made a general assignment for the benefit of creditors, (ii) filed any voluntary petition in bankruptcy or suffered the filing of any involuntary petition by Seller's creditors, (iii) suffered the appointment of a receiver to take possession of all or substantially all of Seller's assets, (iv) suffered the attachment or other judicial seizure of all, or substantially all, of Seller's assets, (v) admitted in writing its inability to pay its debts as they come due, or (vi) made an offer of settlement, extension or composition to its creditors generally.

(c) Risk of Loss. Seller shall bear the risk of loss to the Property prior to Closing.

8. Buyer's Representations and Warranties. Buyer hereby represents and warrants as follows:

(a) Status. Buyer is political subdivision of the State of Utah.

(b) Authority. Buyer has full capacity, right, power and authority to execute, deliver and perform this Agreement and all documents to be executed by Buyer pursuant to this Agreement, and all required actions and approvals therefore have been duly taken and obtained. The individuals signing this Agreement and all other documents executed or to be executed pursuant hereto on behalf of Buyer are and shall be duly authorized to sign the same on Buyer's behalf and to bind Buyer thereto. This Agreement and all documents to be executed pursuant hereto by Buyer are and shall be binding upon and enforceable against Buyer in accordance with their respective terms.

(c) No Breaches. Buyer's obligations contemplated hereby and the execution, delivery and performance of this Agreement by Buyer will not result in a breach of, or constitute a default under any instrument or agreement to which Buyer is bound. Buyer's obligations and responsibilities hereunder are valid and binding obligations of Buyer.

9. Closing.

(a) Date. Within thirty (30) days after expiration of the Second Additional Period, the purchase and sale of the Property shall be closed at the Title Company on a date and time agreed to by the parties (the "**Closing**" or "**Closing Date**"). At Closing, Buyer and Seller shall deliver such written instructions to the Title Company as may be necessary to complete the transaction contemplated by this Agreement.

(b) Prorations. Current real property taxes, assessments and personal property taxes with respect to the Property shall be prorated between Buyer and Seller as of the

Closing Date. If on the Closing Date either applicable assessed value or mill levy for the applicable year cannot be ascertained, real property taxes relative to the Property shall be apportioned on the basis of the assessed value and mill levy for the previous year, and the parties shall make adjustment payments after the Closing based on the actual assessed value and the actual mill levy for the applicable year when such information is available.

(c) Closing Costs. Seller shall be responsible for the payment of the standard coverage premium for the issuance of the Title Policy and the cost of recording the Deed. Buyer and Seller shall each pay fifty percent (50%) of any escrow fees. Any extraordinary closing costs, including but not limited to those costs associated with Buyer's investigation, approval or development of the Property, or Buyer's requirements for additional title insurance coverage (such as extended coverage and endorsements) in excess of the standard coverage provided by Seller, shall be borne entirely by Buyer.

(d) Possession. Seller shall have sixty (60) days from the Closing Date (the "**Possession Period**") to vacate the Property and deliver possession to Buyer. During the Possession Period, Seller, at its sole cost, shall maintain insurance on the Property and be responsible for all utility charges. Seller shall indemnify and hold Buyer harmless from any and all liability, claims or expenses arising out of Seller's occupancy during the Possession Period. The foregoing indemnification shall survive Closing or termination of this Agreement.

(e) Approval of Closing Documents. All closing documents to be furnished by Buyer or Seller pursuant to this Agreement shall be in form and substance provided by statute or otherwise reasonably satisfactory to both Buyer and Seller.

10. Agency Disclosure and Brokers' Commissions. Other than Kip Paul of Cushman & Wakefield Commerce, representing Buyer, and Chet Barber of Hoff and Leigh, representing, Seller, who shall be paid a commission by Seller pursuant to the terms of a separate written agreement, Buyer and Seller each warrants that it has had no dealing with any broker or agent in connection with the transaction contemplated by this Agreement and each agrees to indemnify and hold the other harmless from and against any claims by any broker, agent or person (other than those set forth above) claiming a commission or other form of compensation by virtue of having dealt therewith with regard to this transaction.

11. Default. In the event Buyer defaults in any obligation hereunder and does not cure such default within five (5) days after receiving written notice thereof, Seller may elect as its sole remedy to terminate this Agreement and receive the Earnest Money together with interest accrued thereon as liquidated damages for Buyer's default. The parties agree that this amount represents a reasonable estimate of the value of the anticipated damages, losses, costs and expenses which would be incurred by the Seller due to a breach of this Agreement by the Buyer.

In the event Seller defaults in any obligation hereunder and does not cure such default within five (5) days after receiving written notice thereof, Buyer may elect as its sole remedies to (a)

terminate this Agreement and receive the Earnest Money together with interest thereon, or (b) seek specific performance of this Agreement.

12. Notice. Any notice required to be given pursuant to this Agreement shall be in writing and may be given by personal delivery or by certified or overnight mail, postage prepaid, at the following addresses:

If to Seller: West Jordan 12, LLC
Attention: Timothy Brandt
184 West 3300 South
Salt Lake City, Utah 84115

with a copy to:

Nelson Christensen Hollingworth & Williams
Attention: Stephen K. Christensen
68 South Main Street, 6th Floor
Salt Lake City, Utah 84101

If to Buyer: City of West Jordan
Attention: City Clerk
8000 South Redwood Rd., 3rd Floor
West Jordan, Utah 84088

with a copy to:
City of West Jordan
Attention: City Attorney
8000 South Redwood Rd., 2nd Floor
West Jordan, Utah 84088

13. Property Purchased "AS IS". Except as otherwise specifically set forth herein, Seller makes no representations or warranties, express or implied, and specifically disclaims any implied warranty as to the condition, quality, safety, freedom from defects (whether or not detectable by inspection), merchantability, fitness for Buyer's intended use, freedom from contamination by hazardous wastes or substances, compliance with zoning or other legal requirements, for all or any part of the Property, or as to the availability or existence of any utility or other governmental or private services, or concerning the area of the Property or the location or correctness of the boundaries of the Property. Accordingly, except for the express warranties set forth in this Agreement, Buyer is purchasing the Property on an "AS IS, WHERE IS, AND WITH ALL ITS FAULTS" basis, and hereby assumes, as of the Closing Date, all risks relating to the Property, including but not limited to risks associated with conditions that may or may not be discoverable by inspection. If despite the foregoing disclaimer Seller should be deemed to have any liability or responsibility for the condition of the Property, Seller shall in no event be liable for any incidental or consequential damages, whether due to loss of use or enjoyment of the Property or otherwise, except

for any actual out-of-pocket damages for Seller's breach of its representations and warranties hereunder. The provisions of this Section 13 shall survive the Closing.

14. Miscellaneous.

(a) Time of Essence. Time is of the essence of this Agreement.

(b) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Utah. The venue shall be the Third District Court in Salt Lake County, Utah.

(c) Amendment. This Agreement may be amended only in writing signed by both Buyer and Seller.

(d) Counterparts. This Agreement may be executed and delivered in any number of counterparts, each of which so executed and delivered shall be deemed to be an original and all of which shall constitute one and the same instrument. In addition, the parties agree that facsimile and electronically generated signature pages shall be as valid as any signature pages bearing original signatures, provided, that upon the written request of either party, the other party shall provide counterparts containing original signatures.

(e) Entire Agreement. Seller and Buyer agree that this Agreement states the entire agreement between the parties and that no promises, representations or agreements other than those herein contained have been made or relied upon.

(f) No Waiver. No waiver hereunder shall be binding unless executed in writing by the party making the waiver.

(g) Attorneys' Fees. If any action is brought by either party on account of any breach of or to enforce or interpret any of the provisions of this Agreement, or if either party incurs attorneys' fees on account of any breach of any of the provisions of this Agreement, the party prevailing or successfully enforcing its rights hereunder shall be entitled to recover from the other party all costs and expenses, including attorneys' fees, reasonably incurred in connection therewith.

(h) Further Assurances. The parties each agree to perform, execute, acknowledge and deliver all such further acts, instruments and assurances and to take all such further action before or after the closing as shall be necessary or desirable to fully carry out this Agreement and to fully consummate and effect the transactions contemplated hereby.

(i) Survival. This Agreement shall be binding upon and inure to the benefit of Buyer and Seller and their respective heirs, personal representatives, successors and permitted assigns.

(j) Patriot Act Certification. Buyer and Seller (each a “**Representing Party**”) each represent and warrant to the other that (i) neither the Representing Party nor any of its officers, directors or managing members is a person or entity (each a “**Prohibited Person**”) with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control (“**OFAC**”) of the Department of the Treasury (including those named on OFAC’s Specially Designated Nationals and Blocked Persons List) or under any statute, executive order (including Executive Order 13224 (the “**Executive Order**”) signed on September 24, 2001 and entitled “Blocking Property and Prohibiting Transactions with Person Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action, (ii) the Representing Party’s activities do not violate the International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001 or the regulations or orders promulgated thereunder (as amended from time to time, the “**Money Laundering Act**”), and (iii) the Representing Party shall comply with the Executive Order and with the Money Laundering Act.

(k) Survival of Representations. The representations and warranties of Seller shall survive the Closing.

(l) Assignment. This Agreement may be assigned by Buyer or Seller, provided however, in no event shall any such assignment relieve the assignor of any of its obligations under this Agreement.

[Signature Page Follows]

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EXHIBIT "A"
Description of Property

Lot 1, WELBY MANUFACTURING PARK, PHASE 3 AMENDED, according to the official plat thereof, as recorded in the Office of the Salt Lake County Recorder.

Less and Excepting that portion owned in fee by Welby Jacob Water Users Company, formerly known as Provo Reservoir Company, a Utah Corporation.